

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1223 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NEEMA YOGESH JOSHI

Versus

YOGESH PITAMBER JOSHI

Appearance:

MR SP HASURKAR for Petitioner
None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/11/1999

ORAL JUDGEMENT

1. Under the order dated 3-5-1995 of 3rd Extra
Assistant Judge, Baroda below Ex.12 in H.M.P. No. 183
of 1993, the petitioner -husband therein was directed to
pay an amount of Rs.600/- to the respondent- wife and
Rs.300/to each kid towards their interim alimony from the
date of filing of the application i.e. 22-12-1993 till
the termination of the proceedings. However, it is
further ordered that out of this amount. Rs.400/awarded
under section 125 of the Cr.P.C. is liable to be

adjusted. The court has further ordered the respondent to pay Rs.2500/towards the expenses of the proceedings. Hence, this revision application under section 115 of the C.P.C. before this court.

2. Heard the learned counsel for the petitioner. It is the case of the petitioner that the husband is earning an amount of Rs.3449/- p.m.. It was the case of the respondent- husband that he is receiving net amount of Rs.1900/- p.m. The court has taken his income to be Rs.3449/- p.m. and accordingly an order has been passed for grant of maintenance. The trial court has not accepted the defence taken by the respondent that the petitioner is serving in Baroda Stock Exchange. This order has been passed on 3-5-1995 and it is possible that by now the H.M.P. which has been filed in the year 1993 would have been decided. It is unfortunate that nobody has put appearance for the respondent. In the revision application, the petitioner prayed for suitable enhancement of maintenance and further to award her Rs.10,000/- towards costs of litigation. For enhancement of the maintenance amount, I do not find any material on the record. Out of Rs.3449/-, the court has awarded Rs.600/ to the wife and Rs.300/- per kid. From the record of this case, I find that there are two kids. So total amount comes to Rs.1200/-. Even if we go by the principle of awarding of 1/3 of total income of the husband, it is just near to that figure. however, this order has been passed in the year 1995. On the basis of the salary which was there of the husband the amount of maintenance has been awarded to the wife and the children which can not be said to be towards the lower side. It is always open to revision on application of the wife and children and where the court is satisfied that the income of the husband has increased thereafter it can suitably enhance the amount of maintenance also. This order has been passed in the year 1995 and thereafter whether any step has been taken by them for enhancement of maintenance amount or not is not on the record of this revision application.

3. So far as the claim of the litigation expenses is concerned, it is suffice to say that the petitioner being a woman is entitled for free legal aid and reference in this respect may have to the provisions of section 12 of the Legal Services Authorities ACT, 1987. If the petitioner is not in a position to engage the advocate and bear other expenses within this amount of Rs.2500/=, it is her right to approach to the concerned authorities under the Act aforesaid and she can be given free legal aid. In view of this fact, the claim of the petitioner

for enhancement of the amount of the expenses of litigation does not stand to any merits.

4. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Learned trial court is directed to decide the H.M. Petition within a period of three months from the date of receipt of writ of this order in case it is not decided so far.

zgs/-